LPA No.57 of 2007

29.8. 2007 Present : Mr.Rahul Mahajan, counsel for the appellants.
Mr.R.S.Kanwar, Advocate vice Adarsh K.Vashist,
Counsel for the respondents.

CMP (M) No.549 of 2007:

Heard. For the reasons stated in the application, the delay in filing the appeal is condoned.

CMP Nos.576 & 577 of 2007:

The Writ petition was filed by Smt.Manjeet Monga mother of the applicants-appellants. They have submitted that their mother has expired and they may be permitted to be brought on record and file the present appeal. These applications are allowed and the applicants who are legal heirs of petitioner Smt.Manjeet Monga are permitted to file the present appeal.

LPA No.57 of 2007:

This appeal is directed against the order of the learned Single Judge dated 1.6.2007 whereby he has rejected the writ petition filed by Smt.Manjeet Monga, mother of the present appellants.

The brief facts necessary for decision of the case are that a written complaint was received on 22.10.1999 from the Engineering and Sanitation Department of the Municipal Council, Dalhousie that the appellants were carrying on and raising construction of 4th storey of Hotel Monga situated on MES Pipe Line Road, Dalhousie without any permission or sanctioned plan. Notice was issued to Smt.Manjeet Monga under Section 211(1)(a) of the H.P. Municipal Act, 1994 (hereinafter referred to as the Act) on 11.11.1999 to stop the construction. She did not do so. Thereafter, the matter was placed before the House and the Municipal Council, Dalhousie vide Resolution No.440 dated 26.2.2000 gave one opportunity of 7 days

to Smt.Manjeet Monga to remove the unauthorized construction. Smt.Manjeet Monga filed reply and submitted that in fact she has not constructed 4th storey and has only made repairs to the roof of the 3rd storey as it was leaking. The Municipality found that Smt.Manjeet Monga has unauthorisedly constructed 4th storey complete with RCC slab. The matter was again taken up by the Municipal Council on various dates and fresh report of the Municipal Engineer was called for. The Engineering staff again reported that a 4th storey had been constructed without any sanctioned plan and that the 3rd storey had also been extended. Finally, an order was issued on 5th July, 2001 directing the demolition of the unauthorized 4th storey.

Smt.Manjeet Monga filed an appeal to the District Judge, Chamba who after taking into consideration the entire facts and evidence led before him and also taking into consideration the provisions of law came to the conclusion that Smt.Manjeet Monga has raised a 4th storey and had also extended the third storey without any sanction and therefore upheld the orders of demolition.

The learned Single Judge of this Court has also upheld this judgment.

The only contention raised on behalf of the appellants is that in fact there is no 4th storey and the appellants have only raised 3rd storey. On the last date i.e. 21.8.2007 we had directed the appellants to produce the sanctioned plan on the basis of which they had carried on the construction. We have seen the sanctioned plan. In fact this plan is only for two storeys and a basement. In fact it appears that the plan for the basement was also not approved since the basement had been crossed off but the front elevation of the building does

show a basement. Sh.Rahul Mahajan has also produced the original photographs of this building and contends that there are only 3 storeys. From the sanctioned plan it is apparent that the plan was sanctioned only for two storeys. No third storey was sanctioned. It appears that the Municipal Council authorities are counting the basement as a storey and therefore the 3rd storey raised by the petitioner has been termed as a 4th storey. However, whether it is termed as a 3rd storey or 4th storey the fact remains that there is no sanctioned plan for raising the top floor of hotel Monga. The sanctioned plan is only for two storeys. This floor has been raised unauthorisedly without any sanction. Dalhousie is a beautiful hill station and the beauty of Dalhousie is being marred by unauthorized and unregulated construction. The learned Single Judge has rightly held that the appellants are not entitled to any relief.

In view of the above discussion, we find no merit in the appeal and the same is dismissed.

(Deepak Gupta),
Judge

August 29, 2007 **(V.K. Ahuja)**
PV **Judge.**